

**Hearing Date and Time: To Be Determined**

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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

**In re:**

**Absolut Facilities Management, LLC, *et al.*,**

**Debtors.**

) **Chapter 11**

)

) **Case No. 19-76260 (AST)**

) **Case No. 19-76263 (AST)**

) **Case No. 19-76267 (AST)**

) **Case No. 19-76268 (AST)**

) **Case No. 19-76269 (AST)**

) **Case No. 19-76270 (AST)**

) **Case No. 19-76271 (AST)**

) **Case No. 19-76272 (AST)**

)

) **(Jointly Administered)**

)

)

**OBJECTION OF NEW YORK STATE ELECTRIC AND GAS CORPORATION TO DEBTORS' EMERGENCY MOTION FOR ORDER UNDER 11 U.S.C. §§ 105(A) AND 366 (I) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES, (II) APPROVING DEPOSIT ACCOUNT AS ADEQUATE ASSURANCE OF PAYMENT, AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT**

New York State Electric and Gas Corporation ("NYSEG"), by counsel, hereby objects to the *Debtors' Emergency Motion For Order Under 11 U.S.C. §§ 105(A) and 366 (I) Prohibiting Utility Companies From Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit Account As Adequate Assurance of Payment, and (III) Establishing Procedures For Resolving Requests By Utility Companies For Additional Assurance of Payment* (the "Utility Motion") (Docket No. 5), and sets forth the following:

**Introduction**

The Debtors' Utility Motion improperly seeks to shift the Debtors' obligations under Section 366(c) (3) from modifying the amount of the adequate assurance of payment requested by NYSEG under Section 366(c)(2) to setting the form and amount of the adequate assurance of payment acceptable to the Debtors. This Court should not permit the Debtors to shift their statutory burden.

The Debtors seek to have this Court approve their form of adequate assurance of payment, which is to earmark a sum equal to approximately 50% of the Debtors' estimated monthly utility charges that may be contained in the Debtors' existing bank accounts and not in a separate bank account (the "Utility Earmark"). Section 366(c) of the Bankruptcy Code specifically defines the forms of adequate assurance of payment in Section 366(c) (1), none of

which include the Debtors' right to "earmark" funds for utilities that will be held by the Debtors in their own bank accounts.

The Court should reject the Debtors' proposed Utility Earmark because: (1) NYSEG bills the Debtors on a monthly basis and provides the Debtors with generous payment terms pursuant to applicable state law tariffs and regulations and a two-week amount held by the Debtors is not sufficient in amount or in form to provide NYSEG with adequate assurance of payment; (2) Section 366(c) of the Bankruptcy Code specifically defines the forms of adequate assurance of payment in Section 366(c)(1), none of which include the Debtors' right to "earmark" funds for utilities as adequate assurance to be contained in the Debtors' bank accounts; and (3) Even if this Court were to improperly consider Utility Earmark as a form of adequate assurance of payment for NYSEG, the Court should reject it as an insufficient form of adequate assurance of payment for the reasons set forth in Section A.1. of this Objection.

NYSEG is seeking a two-month cash deposit in the amount of \$85,790 from the Debtors, which is an amount that NYSEG is authorized to obtain pursuant to applicable state law. Based on all the foregoing, this Court should deny the Utility Motion as to NYSEG because the amount of NYSEG's post-petition deposit request is reasonable under the circumstances and should not be modified.

### **Facts**

#### **Procedural Facts**

1. On September 10, 2019 (the "Petition Date"), the Debtors commenced their cases under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") that are now

pending with this Court. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

2. The Debtors' chapter 11 bankruptcy cases are being jointly administered.

**The Utility Motion**

3. On September 11, 2019, the Debtors filed the Utility Motion.

4. On September 18, 2019, the Court held a hearing on the Utility Motion.

5. The Debtors seek to avoid the applicable legal standards under Sections 366(c)(2) and (3) by seeking Court approval for their own form of adequate assurance of payment, which is the Utility Earmark that supposedly reflects a sum equal to approximately 50% of the Debtors' estimated monthly utility charges that may be contained in the Debtors' existing bank accounts and not in a separate bank account. Utility Motion at ¶ 15.

6. The proposed Utility Earmark is not acceptable to NYSEG and should not be considered relevant by this Court because Sections 366(c)(2) and (3) do not allow the Debtors to establish the form or amount of adequate assurance of payment. Under Sections 366(c)(2) and (3), this Court and the Debtors are limited to modifying, if at all, the amount of the security sought by NYSEG under Section 366(c)(2).

7. The Debtors' propose that the Utility Earmark would be subject to the terms and conditions of the DIP Financing agreement and applicable Orders. Utility Motion at ¶ 15. It is not clear if the Debtors and their secured lenders are trying to subordinate all of the post-petition payments made to NYSEG to the secured lenders' liens or just the proposed Utility Earmark amount. At a minimum, all post-petition payments made by the Debtors to NYSEG, including any post-petition security, should not be subordinated to the lenders' liens or subject to

subsequent disgorgement by the secured lenders. If the Debtors want NYSEG to provide post-petition utility goods/services, any and all post-petition payments made to NYSEG should be free and clear of any and all liens, otherwise all of the relief sought in the Utility Motion is nothing more than a subterfuge.

8. Through the Utility Motion, the Debtors seek to pay the most recent invoices received from a utility provider, even if a portion of the period covered by an invoice is for service prior to the Petition Date. Utility Motion at ¶ 7. In connection with the foregoing, NYSEG, by counsel, has contacted Debtors' counsel to ascertain if checks received post-petition from the Debtors were tendered pursuant to the foregoing provision and whether the checks will clear the bank. Debtors' counsel has responded to the emails, but have not yet provided an answer as to why the checks were tendered or if they will clear the bank.

9. The Utility Motion does not address why the Utility Earmark would be undercapitalized at only a supposed two-week deposit amount when the Debtors know that NYSEG is required by applicable state laws, regulations or tariffs to bill the Debtors monthly. Moreover, presumably the Debtors want NYSEG to continue to bill them monthly and provide them with the same generous payment terms that they received prepetition. Accordingly, if the Utility Earmark is relevant, which NYSEG disputes, the Debtors need to explain: (A) why they are only proposing that the Utility Earmark would only contain approximately two-weeks of utility charges from NYSEG; and (B) how such an insufficient amount could even begin to constitute adequate assurance of payment for NYSEG's monthly bills.

10. Furthermore, the Utility Motion does not address why this Court should consider modifying, if at all, the amount of NYSEG's adequate assurance request pursuant to Section

366(c)(2). Rather, without providing any specifics, the Utility Motion merely states that the Utility Earmark, “coupled with the Debtors’ ability to pay for future Utility Services in the ordinary course of business,” constitutes sufficient adequate assurance for the Debtors’ utility companies. Utility Motion at ¶ 16.

### **The Debtors’ Post-Petition Financing**

11. On September 11, 2019, the Debtors filed the *Debtors’ Emergency Motion For Entry of Interim and Final Orders (I) Authorizing Debtors To (A) Obtain Postpetition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) and (B) Use Cash Collateral* (the “Financing Motion”)(Docket No. 4).

12. Through the Financing Motion, the Debtors are seeking approval to enter into a DIP Facility which consists of a \$2 million revolving line of credit. Financing Motion at ¶ 14.

13. Through the Financing Motion, the Debtors also sought a carve-out for the payment of approved fees of the Debtors’ professionals incurred prior to notice of the occurrence of the Termination Date, plus postpetition fees and expenses of the Chapter 11 postpetition professionals incurred after notice of the occurrence of the Termination Date (the “Carve-Out”). Financing Motion at pages 12-13.

### **The Debtors’ Critical Vendor Motion**

14. On September 11, 2019, the Debtors filed the *Debtors’ Emergency Motion For Entry of Interim and Final Orders Authorizing the Debtors To Pay Certain Prepetition Claims of Critical Vendors* (the “Critical Vendor Motion”) (Docket No. 10). Through the Critical Vendor Motion, the Debtors seek authority to pay the prepetition claims of certain supposed critical vendors of up to \$785,493.97. Critical Vendor Motion at ¶ 15, 16.

**Facts Concerning NYSEG**

15. NYSEG provided the Debtors with prepetition utility goods and/or services and has continued to provide the Debtors with utility goods and/or services since the Petition Date.

16. Under NYSEG's billing cycle, the Debtors receive approximately one month of utility goods and/or services before NYSEG issues a bill for such charges. Once a bill is issued, the Debtors have 23 days to pay the applicable bill. If the Debtors fail to timely pay the bill, a past due notice is issued and, in most instances, a late fee may be subsequently imposed on the account. If the Debtors fail to pay the bill after the issuance of the past due notice which cannot be issued by NYSEG until 20 days from the due date have elapsed, NYSEG issues a notice that informs the Debtors that they must cure the arrearage within a certain period of time or its service will be disconnected. NYSEG cannot terminate service for a non-payment default until at least 8 days after issuance of the written termination notice has elapsed. Accordingly, under NYSEG's billing cycle, the Debtors could receive at least two months of unpaid charges before NYSEG could cease the supply of utility goods and/or services for a post-petition payment default.

17. In order to avoid the need to bring witnesses and have lengthy testimony regarding NYSEG's regulated billing cycle, NYSEG requests that this Court, pursuant to Rule 201 of the Federal Rules of Evidence, take judicial notice of NYSEG's billing cycle. Pursuant to the foregoing request and based on the voluminous size of the applicable documents, NYSEG's web site link to the tariffs and/or state laws, regulations and/or ordinances can be found at the following:

NYSEG:

Electricity -

[https://www.nyseg.com/wps/portal/nyseg/account/understandyourbill./electricpricing!/ut/p/z1/tZNbb4IwFIB\\_yx54ZC3gBR6REIjhoiLj8kJqQayBgld\\_vvVzF2yTFmWrUkfmpxz-vWcryAFMUgpOpISMdJQVPFzko4yRXJNe2BAz3d8Gc7h1NK0cKGEpgyiewF6MATpT\\_LhjaXDvvwnkIIUU9ayDUjoeV-UqOyyjzclcFOgvOgEiDBuDpQJ8ED5ec8Qzc\\_NoVuRqnoUYFEVmHUEt3wTWl6qtpjkIBlphaLAgSSu1upYHEjjlahirImairAs5coIKcNLdGS4meX4E93JDN9bmVESJAL0ksC0dGuReZ-I7CuR\\_kYUvhMlnGjySmReiWZXoqhvfOn9RkYXyp5Z9dVIOMP4VgU74OM8kulZhLTpam5P8Ls2zkNzwW\\_6947aEEz7\\_OIfQO5cw-VGtlhtRELXDYi\\_UQjEXxXiqWS726U6F7ShrDgxEP-hoW0dhrWq1GIMt8OyVk-iFc0c\\_eEF58gWWQ!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?WCM\\_GLOBAL\\_CONTEXT=%2FNYSEGAGR\\_Navigation%2FHeader%2FAccount%2FUnderstandYourBill.%2FElectricPricing](https://www.nyseg.com/wps/portal/nyseg/account/understandyourbill./electricpricing!/ut/p/z1/tZNbb4IwFIB_yx54ZC3gBR6REIjhoiLj8kJqQayBgld_vvVzF2yTFmWrUkfmpxz-vWcryAFMUgpOpISMdJQVPFzko4yRXJNe2BAz3d8Gc7h1NK0cKGEpgyiewF6MATpT_LhjaXDvvwnkIIUU9ayDUjoeV-UqOyyjzclcFOgvOgEiDBuDpQJ8ED5ec8Qzc_NoVuRqnoUYFEVmHUEt3wTWl6qtpjkIBlphaLAgSSu1upYHEjjlahirImairAs5coIKcNLdGS4meX4E93JDN9bmVESJAL0ksC0dGuReZ-I7CuR_kYUvhMlnGjySmReiWZXoqhvfOn9RkYXyp5Z9dVIOMP4VgU74OM8kulZhLTpam5P8Ls2zkNzwW_6947aEEz7_OIfQO5cw-VGtlhtRELXDYi_UQjEXxXiqWS726U6F7ShrDgxEP-hoW0dhrWq1GIMt8OyVk-iFc0c_eEF58gWWQ!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?WCM_GLOBAL_CONTEXT=%2FNYSEGAGR_Navigation%2FHeader%2FAccount%2FUnderstandYourBill.%2FElectricPricing)

Gas -

[https://www.nyseg.com/wps/portal/nyseg/account/understandyourbill./naturalgaspricing!/ut/p/z1/vZPbboJAEIafpRdc0l0BES-REIgRqAfK4YasC-IaWBAWq2\\_fNdpD0ipN03TvJpl\\_5puZf0EMQhBTdCA5YqSiqOBxFKuJPHBMWzGg6808Cc7h1BqP\\_YXsmxII7iXoyyGlf6KHN54O-TPIAYxpqxmWxDRU5vIKG-SjxkEuM1QmjUCRBhXHWUC7CiPW4Zoeqq6Zk2K4lGAFLGuQUWO2rohmnND8XLfGJAWRpCGMhhiKAYUdiYoyzsT1SFVFpGJZktMBxnBzzg4MJ7Fm3kSfJYbnrsxwBSIButHStHRrkbi\\_fmOwrk\\_7G5L8zRZxpcmFyL0wWap-uTEHfOeL7ywwzOnD336qsRcYbRrQr2kp\\_0QLIX4NOqKbmDlr9b5Nw3F7zTP-zUhmDa5zL-Dchuv4917rWKsuzlQPinZuMNPMyxHG67GrGtSOimAuE3Yt73i7gufb\\_U5FIM4W6Y19pRtAKt1R9eAQKjbNM!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?WCM\\_GLOBAL\\_CONTEXT=%2FNYS EGAGR\\_Navigation%2FHeader%2FAccount%2FUnderstandYourBill.%2FNaturalGasPricing](https://www.nyseg.com/wps/portal/nyseg/account/understandyourbill./naturalgaspricing!/ut/p/z1/vZPbboJAEIafpRdc0l0BES-REIgRqAfK4YasC-IaWBAWq2_fNdpD0ipN03TvJpl_5puZf0EMQhBTdCA5YqSiqOBxFKuJPHBMWzGg6808Cc7h1BqP_YXsmxII7iXoyyGlf6KHN54O-TPIAYxpqxmWxDRU5vIKG-SjxkEuM1QmjUCRBhXHWUC7CiPW4Zoeqq6Zk2K4lGAFLGuQUWO2rohmnND8XLfGJAWRpCGMhhiKAYUdiYoyzsT1SFVFpGJZktMBxnBzzg4MJ7Fm3kSfJYbnrsxwBSIButHStHRrkbi_fmOwrk_7G5L8zRZxpcmFyL0wWap-uTEHfOeL7ywwzOnD336qsRcYbRrQr2kp_0QLIX4NOqKbmDlr9b5Nw3F7zTP-zUhmDa5zL-Dchuv4917rWKsuzlQPinZuMNPMyxHG67GrGtSOimAuE3Yt73i7gufb_U5FIM4W6Y19pRtAKt1R9eAQKjbNM!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?WCM_GLOBAL_CONTEXT=%2FNYS EGAGR_Navigation%2FHeader%2FAccount%2FUnderstandYourBill.%2FNaturalGasPricing)

18. Subject to a reservation of NYSEG's right to supplement its post-petition deposit request if additional accounts belonging to the Debtors are subsequently identified, NYSEG's post-petition deposit request is as follows:

<u>Utility</u>	<u>No. of Accts.</u>	<u>Estimated Prepet. Debt</u>	<u>Dep. Request</u>
NYSEG	8	\$117,851.22	\$85,790 (2-month)

19. The Debtors have provided the Court with their plan to close their Orchard Park Facility by November 15, 2019. Assuming that the Orchard Park Facility is closed by November 15, 2019, NYSEG will have provided the Debtors with over two months of post-petition utility



goods/services prior to the closure of that facility. Accordingly, NYSEG is seeking post-petition security for providing utility service to the Orchard Park Facility, but after the final post-petition bills for that facility are paid, NYSEG would be willing to return the deposits for those accounts.

### **Discussion**

#### **A. THE UTILITY MOTION SHOULD BE DENIED AS TO NYSEG.**

Sections 366(c)(2) and (3) of the Bankruptcy Code provide:

(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility;

(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

As set forth by the United States Supreme Court, “[i]t is well-established that ‘when the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.’” *Lamie v. United States Trustee*, 540 U.S. 526, 534, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004) (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N. A.*, 530 U.S. 1, 6, 120 S. Ct., 1942, 147 L. Ed. 2d 1 (2000)). *Rogers v. Laurain (In re Laurain)*, 113 F.3d 595, 597 (6th Cir. 1997) (“Statutes . . . must be read in a ‘straightforward’ and ‘commonsense’ manner.”). A plain reading of Section 366(c)(2) makes clear that a debtor is required to provide adequate assurance of payment satisfactory to its utilities on or within thirty (30) days of the filing of the petition. If a debtor believes the **amount** of the utility’s request needs to be modified, then the debtor can file a motion under Section

366(c)(3) requesting the court to modify the **amount** of the utility's request under Section 366(c)(2).

In this case, the Debtors filed the Utility Motion to improperly shift the focus of their obligations under Section 366(c)(3) from modifying the amount of the adequate assurance of payment requested under Section 366(c)(2) to setting the form and amount of the adequate assurance of payment acceptable to the Debtors. Accordingly, this Court should not reward the Debtors for their failure to comply with the requirements of Section 366(c) and deny the Utility Motion as to NYSEG.

**1. The Debtors' Proposed Utility Earmark Is Not Relevant And Even If It Is Considered, It Is Unsatisfactory Because It Does Not Provide NYSEG With Adequate Assurance of Payment.**

This Court should not even consider the Bank Account as a form of adequate assurance of payment because: (1) It is not relevant because Section 366(c)(3) provides that a debtor can only modify "the amount of an assurance of payment under paragraph (2)"; and (2) The Utility Earmark is not a form of adequate assurance of payment recognized by Section 366(c)(1)(A). Moreover, even if the Court were to consider the Utility Earmark, the Utility Earmark is an improper and otherwise unreliable form of adequate assurance of future payment for the following reasons:

1. Unlike the statutory approved forms of adequate assurance of payment, the Utility Earmark is not something held by NYSEG. Accordingly, NYSEG has no control over how long the Utility Earmark will remain in place.
2. In order to access the Utility Earmark, NYSEG would have to incur the expense to draft, file and serve a default pleading with the Court and possibly litigate the demand if the Debtors refuse to honor a Disbursement Request.

3. It is underfunded from the outset because NYSEG issue monthly bills and by the time a default notice is issued the Debtors will have received approximately 60 days of commodity or service. Accordingly even if NYSEG attempt to access Utility Earmark it will be only cover one half of the past due charges and none of the additional charges for utility service/goods provided after the past due charges were incurred.
4. The Debtors may use the Utility Earmark before all post-petition utility charges are paid in full.
5. The Debtors fail to state whether draws from the Utility Earmark would be limited to two-week amounts.
6. The Debtors secured lenders would have a lien on the Utility Earmark.

Accordingly, the Court should not approve the Utility Earmark as adequate assurance to NYSEG because the Utility Earmark is: (a) not the **form** of adequate assurance requested by NYSEG; (b) not a form recognized by Section 366(c)(1)(A); and (c) an otherwise unreliable form of adequate assurance.

**2. The Utility Motion Should Be Denied As To NYSEG Because the Debtors Have Not Set Forth Any Basis For Modifying NYSEG's Requested Deposit.**

In the Utility Motion, the Debtors fail to address why this Court should modify the amount of NYSEG's request for adequate assurance of payment. Under Section 366(c)(3), the Debtors have the burden of proof as to whether the amount of NYSEG's adequate assurance of payment request should be modified. *See In re Stagecoach Enterprises, Inc.*, 1 B.R. 732, 734 (Bankr. M.D. Fla. 1979) (holding that the debtor, as the petitioning party at a Section 366 hearing, bears the burden of proof). However, the Debtors do not provide the Court with any evidence or factually supported documentation to explain why the amount of NYSEG's adequate assurance request should be modified. Accordingly, the Court should deny the relief

requested by Debtors in the Utility Motion and require the Debtors to comply with the requirements of Section 366(c) with respect to NYSEG.

**B. THE COURT SHOULD ORDER THE DEBTORS TO PROVIDE THE ADEQUATE ASSURANCE OF PAYMENT REQUESTED BY NYSEG PURSUANT TO SECTION 366 OF THE BANKRUPTCY CODE.**

Section 366(c) was amended to overturn decisions such as *Virginia Electric and Power Company v. Caldor, Inc.*, 117 F.3d 646 (2d Cir. 1997), that held that an administrative expense, without more, could constitute adequate assurance of payment in certain cases. Section 366(c)(1)(A) specifically defines the forms that assurance of payment may take as follows:

- (i) a cash deposit;
- (ii) a letter of credit;
- (iii) a certificate of deposit;
- (iv) a surety bond;
- (v) a prepayment of utility consumption; or
- (vi) another form of security that is mutually agreed upon between the utility and the debtor or the trustee.

Section 366 of the Bankruptcy Code was enacted to balance a debtor's need for utility services from a provider that holds a monopoly on such services, with the need of the utility to ensure for itself and its rate payers that it receives payment for providing these essential services. *See In re Hanratty*, 907 F.2d 1418, 1424 (3d Cir. 1990). The deposit or other security "should bear a reasonable relationship to expected or anticipated utility consumption by a debtor." *In re Coastal Dry Dock & Repair Corp.*, 62 B.R. 879, 883 (Bankr. E.D.N.Y. 1986). In making such a determination, it is appropriate for the Court to consider "the length of time necessary for the utility to effect termination once one billing cycle is missed." *In re Begley*, 760 F.2d 46, 49 (3d Cir. 1985).

NYSEG bills the Debtors on a monthly basis for the charges already incurred by the Debtors in the prior month. NYSEG then provides the Debtors with approximately 23 days to pay the bill, the timing of which is set forth in applicable state laws, tariffs and/or regulations. Additionally, if the Debtors fail to timely pay a post-petition bill from NYSEG, NYSEG has to wait at least another 20 days after the due date before it can issue a termination notice for non-payment. Furthermore, NYSEG cannot terminate service for non-payment until at least 8 days after issuance of a notice of termination have elapsed. Based on the foregoing state-mandated billing cycle, the minimum period of time the Debtors could receive service from NYSEG before termination of service for non-payment of post-petition bills is approximately two (2) months or more. Moreover, even if the Debtors timely pay their post-petition utility bills, NYSEG still has potential exposure of 45 to 60 days based on its billing cycle. Furthermore, the amount of NYSEG's deposit request is the amount that the New York State Public Service Commission, which is a neutral third-party entity, permits NYSEG to request from its customers. NYSEG is not taking the position that the deposit that it is entitled to obtain under applicable state law is binding on this Court, but, instead is introducing that amount as evidence of amount that NYSEG's regulatory entity permits it to request from its customers.

Moreover, in contrast to the improper treatment proposed to the Debtors' utilities, the Debtors requesting that certain that post-petition professionals and supposed critical vendors are favored creditors over NYSEG by seeking (i) authority to pay supposed Critical Vendor Claims, and (ii) a professionals carve-out for the payment of their fees/expenses after a default and a guarantee of payment for fees incurred up to a default. Therefore, despite the fact that NYSEG continues to provide the Debtors with crucial post-petition utility services on the same generous

terms that were provided prepetition, with the possibility of non-payment, the Debtors are seeking to deprive NYSEG of any meaningful adequate assurance of payment for which it is entitled to for continuing to provide the Debtors with post-petition utility goods/services.

WHEREFORE, NYSEG respectfully requests that this Court enter an order:

1. Denying the Utility Motion as to NYSEG;
2. Awarding NYSEG the post-petition adequate assurance of payment pursuant to Section 366 in the amount and form satisfactory to NYSEG, which is the form and amounts requested herein; and
3. Providing such other and further relief as the Court deems just and appropriate.

Dated: Garden City, New York  
October 1, 2019

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